

Nonprofit blood bank; private foundation status. Hospitals that receive blood from a nonprofit blood bank under an agreement making each hospital responsible for collecting payment for the blood and remitting the payments to the blood bank, and requiring the hospital to pay for the blood if it fails to collect from the patient, are acting as agents for the blood bank. These amounts the hospital collects are treated as received by the blood bank directly from patients in determining if it satisfies the one-third support test under section 509(a)(2)(A)(ii) of the Code as an organization not a private foundation.

Advice has been requested whether the blood bank described below is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1954.

The blood bank is a nonprofit corporation which has been recognized as exempt from Federal income tax under section 501(c)(3) of the Code. It is governed by a volunteer board of directors composed of community leaders. The blood bank serves the community by supplying blood to various public and privately-owned hospitals in the community and adjacent areas.

Receipts from the sale of blood are the blood bank's principal source of support. Two different fees are charged by the blood bank each time blood is provided a patient. A service fee is charged for the blood bank's services in drawing and processing the blood, and a nonreplacement fee is charged to any patient who does not replace the blood provided to him. If the blood is replaced, the nonreplacement fee is cancelled. Blood may be replaced after transaction, for example, by a friend or relative of the patient, or it may be replaced in advance of need, either by the patient himself or through his participation in a 'donor club' or 'blood assurance plan.'

The blood bank enters into agreements with the hospitals it supplies with blood whereby the hospitals are responsible for collecting charges from the patients and reimbursing the blood bank. Under these agreements, if a patient fails to pay a hospital for the blood he receives, that hospital is still obligated to pay the blood bank for it. These latter sums are referred to as guarantee payments. The agreements further provide that all blood furnished the hospitals remains the property of the blood bank until used. The hospitals are credited for any blood returned, including outdated blood no longer suitable for use. The blood bank may direct the hospitals to return any part of the blood the hospitals have on hand or to release it to another hospital.

The receipts collected by the blood bank for blood furnished to any patient do not exceed \$5,000 or 1 percent of the blood bank's support for any taxable year. The blood sales receipts remitted from each participating hospital greatly exceed \$5,000 or

1 percent of the blood bank's support. The blood bank's blood sales receipts (not including hospital guarantee payments) exceed one-third of its total support, and it receives not more than one-third of its support in any taxable year from gross investment income.

Section 509(a) of the Code defines the term 'private foundation' as a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 509(a)(1), (2), (3), or (4).

Section 509(a)(2) of the Code, in pertinent part, describes an organization which (A) normally receives more than one-third of its support in each taxable year from any combination of gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, not including such receipts from any person in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year, and (B) normally receives not more than one-third of its support in each taxable year from gross investment income.

Since the blood bank retains both legal title to the blood and control over the hospitals regarding its return or redirection at any time prior to use, an agency relationship is created between the hospitals and the blood bank. The fact that the hospitals guarantee payment of any amount they fail to collect from the patients does not preclude the existence of an agency relationship between the blood bank and the hospitals. See Restatement (Second) of Agency, section 145, Comment b(2) (1958).

Therefore, amounts paid to the hospitals are treated as though they have been paid to the blood bank directly, and each patient is considered a separate payor for purposes of the \$5,000 or 1 percent of support limitation provided for in section 509(a)(2)(A)(ii) of the Code.

Amounts received by the blood bank as guarantee payments from the hospitals are not considered as derived from the patients but from the hospitals and are, therefore, includible in the numerator of the blood bank's support fraction only to the extent that support from a particular hospital does not exceed the limitations of section 509(a)(2)(A)(ii) of the Code. However, since the blood bank's blood sales receipts, not including guarantee payments made by the agent hospitals, exceed one-third of its total support, it satisfies the one-third support test of section 509(a)(2)(A).

In addition, since the gross investment income of the blood bank does not exceed one-third of its support, the blood bank also satisfies the requirement of section 509(a)(2)(B) of the Code.

Accordingly, the blood bank is not a private foundation as defined in section 509(a) of the Code.